IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 277 OF 2003

Meera Naik alias
Kesar Vithal Usgaonkar,
wife of Shri Vithu Naik,
aged 56 years, married,
Indian national, r/o
House No.135, Behind
Krishna Mandir, Pajifond,
Margao, Goa. ...Petitioner

Versus

1. State of Goa, through
the Secretary (Revenue),
Government of Goa,
Secretariat, Panaji,

2. The Collector, Collectorate
South Goa District,
Margao, Goa, and

3. The Deputy Collector &
Sub-Divisional Officer,
Sub-Division, Margao. ...Respondents.

Shri S. S. Kakodkar, advocate for the petitioner.

Shri S. Vahidulla, Addl. Government Advocate for the respondents.

CORAM : F. I. REBELLO &
P. V. HARDAS, JJ.

DATE : 7th July, 2003.

ORAL ORDER (Per Rebello,J.)

The petitioner by the present petition, contends that she was working for more than nine years and four months of continuous unbroken service under the respondents. It is the case of the petitioner herself that she was appointed at the age of 46 years and 6 months and she worked upto the age of 54 years and 10 months. She was performing the duties of the post and she was working on a full time post of

sweeper-cum-scavenger. It is the case of the petitioner that her services came to be wrongfully terminated. It is also her case that she used to mark attendance on the register maintained by the respondents. Termination of her services with effect from lst November, 2001, is illegal and, therefore, the reliefs as prayed for. Learned counsel relied on the judgment of the Apex Court in the case of **State of Haryana & Ors. vs. Piara Singh & Ors, (1992) 4 SCC 118** and more specifically on paragraph 15, to contend that the petitioner, considering her long service, ought to have been regularized.

On behalf of the respondents, the Deputy Collector has filed an affidavit. It is pointed out that the petitioner was never appointed on regular basis as sweeper-cum-scavenger. It is pointed out that the petitioner used to work for about 2 1/2 to 3 hours and was being accordingly paid. That amount was paid out of the office expenses and not from salary provisions. The job is a part-time job and till January 1993, the same was got done through any available labourer and from February 1993, the petitioner was called for doing the said job and her services were utilized as and when required upto to the date of her termination, i.e. November, 2001. It is also pointed out that the question of regularization does not arise as she was not appointed against a post which was available. It is also contended that there is no question of paying minimum wages.

2. After hearing learned counsel we are of the opinion that considering that there is no post available and the fact that the petitioner was appointed without following the requirements of her name being either called from Employment Exchange or by considering all other eligible persons, the test as laid down by the Apex Court in paragraph 47 in the case of **State of Haryana vs. Piara Singh** (supra), had not been complied with. Even otherwise, as can be seen from paragraph 15 of the said Judgment, for the purpose of regularisation apart from the fact that there must be a post available, the candidate must otherwise possess the necessary qualifications. The petitioner was at the advanced age of over 46 years. Considering that, as no post was available, and also the fact that the termination took place in November, 2001, and some other person is working, this will not be a fit case for this Court to exercise extraordinary jurisdiction. In the light of that, the Writ Petition is rejected.

F. I. REBELLO, J.

P. V. HARDAS, J.

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